WHITCOMB's

CASE.

PETER WHITCOMB Esq; being seized in Fee of the Mannors of *Braxsted Magna* and *Tolesbury*, and divers Lands thereto belonging the 3d of *September* 1704, dyed leaving Issue only *Mary* and *Elizabeth* his Children by his Former Wife, and both under the Age of Seven Years, and leaving *Gartrude* his then Wife big with Child, the said *Peter* made a Will a few Hours before his Death wherein he gave some Personal Legacies, and made his said then Wife Executrix, but saith nothing of his Real Estate of which the Mother and the Two Daughters were then in actual Possession at *Braxsted*, afterwards the 5th of *December* 1704 his said Wife was Delivered of a Son named *Peter*, who dyed the 29th of *September* 1705. in the Mannor House at *Braxsted* his Mother, whereof had the Possession.

THAT after the Death of the Father the Estate descending to his Two Daughters upon the 7th and 8th of *November* 1704. Courts were kept by Mr. *Cox* the Old Steward at both Mannors in the Names of the said Daughters which is a sort of an Entry for them, altho' the Fines were paid to Mr. *Rogers* for the Widow, and the Widow hath also from the Death of her Husband, taken by the Hands of the said Mr. *Rogers* the Rents and Profits of the said Estate, at least what she could get, tho' short, as we suppose of what was due at Old Mr. *Whitcomb*'s Death, and Receipts were given in the Widow's Name or for her use, but nothing said or done in the Name of the After-born Son, nor any Declaration or Actual Entry for him.

THE Widow is Intitled to her Dower in the said Estate having no Joynture or Settlement, *Peter* the Father before his last Marriage secured by Article 3000 *l.* a Piece to be paid to his said Two Daughters.

THE next Heir at Law to the said Infant Son is supposed to be one Mr. *John Whitcomb* in *Kent* being a Second Cousin to *Peter* the Father, to whom the said *Peter* the Father was not willing to give any thing in his Will, but upon Perswasion gave him 50 *l.* and he never made any Demand or Entry on the said Estate till lately since the Death of the Infant Son he hath delivered his Ejectments on *Braxsted*.

THE Question was, who was Heir and Inheritable to the said Estate, whether the said Kinsman being of the whole Blood to the Dead Infant, or the Daughters as next Heirs to their Father.

It was admitted that if the Posthumous Son had been seized, the remote Kinsman would have been Heir at Law to him, But if the Posthumous Son did not dye seized, the Children the Daughters would be Heirs at Law to their Father and have the Lands.

JOHN

JOHN WHITCOMB the remote Kinſman and Heir at Law of the whole Blood to the Poſthumous Son brought Ejectments, and did what he could at Law, but the Children having all the Title Deeds, and their Father's Purchaſe Deeds and Aſſignments of Terms derived down to attend the Inheritance, and to protect the Eſtate, the Children ſtill made uſe of them, and at Law ſtill Non-ſuited the Plaintiff, So that this remote Heir of the Poſthumous Son brought his Bill in Equity againſt the Mother of the Poſthumous Son (who had a Right of Dower out of the Lands) and againſt the Daughters of Old *Peter Whitcomb* by his firſt Wife to have a diſcovery of what Lands *Peter Whitcomb* dyed Seized, and to have a Diſcovery of the Deeds and Writings relating to the ſame, and to have the Terms which were ſet up at Law ſet out of the way, That they might have a fair Feild to try the Point, and the ſaid *John Whitcomb* the remote Relation's Right at Law.

THE Children, Daughters of *Peter Whitcomb* did by their Anſwer, inſiſt that the Lands in Queſtion were Purchaſed by their Father juſt before his Death, That being bred a *Turkey* Merchant got the Money himſelf, which had he dyed before he had inveſted it into Land the ſame muſt without diſpute have gone to his Wife and Children, That he took the Law to be and always declared to his Death, that if he dyed without Iſſue Male, his Daughters would be his Heirs and have his Eſtate, That as to Perſonal Eſtates the Children of the Half Blood are equally Intitled to Diſtribution with the Children of the Whole Blood, That the Law as to ſuch a remote Heir of a Son of the Half Blood was a hard Law, and againſt Nature and againſt Conſcience, That there was no Grounds or Reaſon for a Court of Equity to Interpoſe to help a remote Heir to ſtrip Purchaſors own Children, And therefore did by Anſwer inſiſt they ought not to diſcover any the Deeds, or Writings, or the Purport, or Contents of any of them, Or the Plaintiff have any Relief in Equity.

This Anſwer was Reported inſufficient and Exceptions being taken to the Report, The Exceptions were argued before the late Lord Chancellor *Cowper*, who de-
15 Novemb. Anno Quinto Anne Regina clared that this was one of the hard Caſes wherein no Relief ought to be given in Equity, he declared the remote Heir Claiming by a hard Law, and that as he could not Relieve the Children ſhould the remote Heir recover at Law, ſo neither could he Relive the remote Heir, And therefore allowed the Exception and did not order any Diſcovery to be made.

BUT the remote Heir replyed Examined many Witneſſes brought his Cauſe to hearing, It held Two Days debate, But his Lordſhip was ſtill of the ſame Opinion.